FEDERAL CONSTRUCTION CO. (PG) SDN. BHD. v. FARIDAH BINTI SHAIFUL YAZAN

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.JJ.) May 11, 1977]
[Alor Star — Federal Court Civil Appeal No. 173 of 1975]

Landlord and Tenant — Termination of tenancy by notice to quit — Allegation of oral agreement for sale of land unsupported by consideration — Defence struck out.

The appellants had let out the premises to the respondent and it was a term of the tenancy agreement that they could discontinue the tenancy thereby created by serving on the respondent a full month's notice requiring her to quit. The appellants gave the respondent notice to quit but the respondent failed to comply with the notice. The appellants thereupon took proceedings for possession. In her defence the respondent alleged that there had been an oral agreement to sell the premises to her. The learned Magistrate ordered that the defence be struck out and he gave judgment against the respondent. On appeal, it was held in the High Court that there was a valid defence raised, and that the respondent was entitled to defend the action. The appellants appealed to the Federal Court.

Held, allowing the appeal: (1) the learned Magistrate was right in striking out the defence. It was clear that the respondent was let into possession of the premises under the tenancy agreement so that her right to remain on the premises, if any, flowed entirely from the agreement;

(2) the respondent could not rely on the oral agreement, as she was not let into possession under that oral agreement nor was the oral agreement supported by any consideration.

FEDERAL COURT.

A. Jayadeva (*Choe Kuan Hin* with him) for the appellant.

Karpal Singh for the respondent.

Gill C.J. (Malaya) (delivering the judgment of the Court): This appeal arose out of an action in the Magistrate's Court at Alor Star in which the appellants as plaintiffs claimed against the respondent as defendant vacant possession of the premises at 1407-A Lorong Bandahara Alor Star, arrears of rent and mesne profits.

The plaintiffs' case as set out in their statement of claim was as follows. By a tenancy agreement dated October 1, 1972 they let the premises to the defendant as from that date for a term of one year at a monthly rental of $190. It was a term of the tenancy agreement that they could discontinue the tenancy thereby created by serving on the defendant a full month's notice requiring her to quit. On August 23, 1973 they gave the defendant one month's notice effective from September 1, 1973 terminating the tenancy and requiring her to vacate the premises on or before October 1, 1973. The defendant failed to comply with the said notice.

In her statement of defence the defendant said that she refused to comply with the notice to quit because some time in August 1970 one Mr. Leong, the manager of the plaintiff company, had agreed to sell the said premises to her or her nominee for a consideration of $27,000 at any time that she wished, that despite her various requests the said Mr. Leong as agent and/or servant of the plaintiff company had failed and/or refused so to do, and that she intended to commence proceedings in the High Court for specific performance of the said agreement.

In due course the plaintiffs made an application to the court that the defendant's defence be struck out and that there be judgment against the defendant in terms of their claim. This application was granted and judgment entered against the defendant accordingly. In his grounds of judgment the learned Magistrate said that where the defendant admitted the existence and the validity of the tenancy agreement and the notice to quit it was not open to her to argue that she was justified in refusing to comply with the notice because of any equitable interest which she might claim in the property by virtue of any alleged sale agreement, and that until the court decreed specific performance of any such agreement she was bound to honour the tenancy agreement.

The defendant appealed. Her appeal was allowed by Syed Agil Barakbah J. on the ground that the learned Magistrate ought to have considered, at the stage when the application to strike out the defence was made, whether a triable issue had been raised in the statement of defence and whether the defendant was entitled to defend the action. He further took the view that the statement of defence had alleged the existence of a separate oral agreement which was not inconsistent with the terms of the written tenancy agreement.

In our judgment the learned Magistrate was right in striking out the defence. It is clear that the defendant was let into possession of the premises under the tenancy agreement so that her right to remain on the premises, if any, flowed entirely from that agreement. Quite clearly she was not let into possession of the premises by virtue of the alleged oral agreement under which she claimed that the plaintiffs had agreed to sell her the premises. We may add that in our view the defendant could not rely upon the oral agreement which was clearly not supported by any consideration.

We therefore allowed the appeal, set aside the order of the learned judge and restored the order made by the learned Magistrate. We made a further order that the defendant do deliver up vacant possession on or before April 30, 1977.

Appeal allowed.

Solicitors: *Choe & Co.; Karpal Singh & Co.*

TAN THEAN CHOO v. CHEAH KAH SEONG & ANOR.

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.JJ.) May 11, 1977]
[Alor Star — Federal Court Civil Appeal No. 49 of 1976]

Land Law — Caveat — Caveator claiming interest in portion of land — Whether entitled to caveat the whole land.

The appellant had bought a 2/11 undivided share in a piece of land in Perlis and had paid part of the purchase price. Subsequently it appeared that the vendor transferred the 2/11 share without consideration to his nephews, (respondents) who were aware of the agreement of sale with the appellant. The appellant lodged a caveat against the land and also started proceedings against the vendor and the respondents. The respondents applied to remove the caveat and the

learned trial judge granted the order for removal on the ground that as the respondent was claiming only a portion of the land he was not entitled to caveat the whole land and also on the ground that the parties had arrived at a settlement. The appellant appealed.

Held, allowing the appeal: (1) a person who claims an interest in a specific portion of land may caveat the whole land, provided that the effect of the caveat is to cover the particular interest claimed;

(2) the appellant claimed to be entitled to the 2/11 share and had started proceedings in respect thereof and therefore the caveat should be allowed to stand so as to maintain the *status quo* between the parties pending the determination of the civil suit.

Cases referred to:-

(1) *Tan Chin Yung* v. *Ernest Jeff* [1963] M.L.J. 118.

(2) *N. Vangedasalam* v. *Mahadevan & Anor.* [1976] 2 M.L.J. 161, F.C.

FEDERAL COURT.

Baldev Singh for the appellant.

A. Jayadeva (*Mayandi* with him) for the respondent.

Gill C.J. (Malaya) (delivering the judgment of the Court): This was an appeal from a judgment of Syed Agil Barakbah J. granting the respondents' application for an order for the removal of the caveat lodged at the instance of the appellant against their land held under G.M. No. 1326 for Lot No. 1184 in the Mukim of Sena, Perlis.

The basis on which the appellant had lodged his caveat was that by an agreement in writing dated September 16, 1974 one Cheah Goh Seng had sold to him his 2/11th undivided share in the said land for the sum of $10,000 of which he had paid a sum of $6,800 by way of deposit. Cheah Goh Seng had in fact on August 26, 1974 transferred his 2/11th share to the respondents, who are his nephews, without consideration and with the respondents being aware of his agreement of sale with the appellant.

In the affidavit in support of the respondents' application for the removal of the caveat, it was stated that they were both registered co-owners of the said land and that the appellants' reason for lodging the caveat was that they had agreed not to sell the land for a price of less than 90 cents per sq. foot and to pay him 2/11th share of the net proceeds of sale. It was further stated that the appellant had authorised them to sell his 2/11th share in the said land, so that the respondents in fact agreed that the appellant was entitled to a 2/11th share in the land.

In his affidavit in opposing the respondents' application for the removal of the caveat, the appellant said that he had agreed to purchase the 2/11th share from Cheah Goh Seng some 8 months prior to the date of the agreement, and that by accepting the transfer of Cheah Goh Seng's share of the land into their names the respondents were a party to a fraud. He further said that when he threatened to take police action against Cheah Goh Seng, there was a meeting between all of them in December 1974 at which the respondents admitted that he was entitled to the 2/11th share of the land, and he gave consent to the land being sold at 90 cents per sq. foot, but that the respondents were attempting to sell it at 70 cents per sq. foot.

In his further affidavit he said that subsequently the respondents had agreed to sell their share of the land to him at 70 cents per square foot, but that they wanted "coffee money" over and above the purchase price which he refused to pay, after which the respondents had made arrangements to sell the land to someone else. He also said that he had filed a civil suit against the respondents and Cheah Goh Seng in the High Court at Alor Star, being Civil Suit No. 203 of 1975.

In granting the order for the removal of the caveat the learned judge held, on the authority of the decision of Ismail Khan J. in *Tee Chin Yong* v. *Ernest Jeff*,[1] that the appellant who was claiming only a portion was not entitled to caveat the whole land. His Lordship was of course not then aware that that decision was over-ruled by the decision of this court in *N. Vangedasalam* v. *Mahadevan & Anor.*[2] in which it was held that a person who claims an interest in a specific portion of land may caveat the whole land, provided the effect of the caveat is to cover the particular interest claimed.

The other reason for which the learned judge ordered the removal of the caveat was that by reason of the settlement reached between the parties the appellant's claim against the respondents lay in contract to the proceeds of sale without giving him any caveatable interest in the land. But the appellant had not in fact at any stage agreed to sell his share in the land to the respondents. What he was *prima facie* entitled to was a transfer of the 2/11th share to him by the respondents as that undivided share in the land had been transferred to them without consideration and with knowledge of the appellant's claim thereto. In any event the appellant had brought an action against the respondents and Cheah Goh Seng so that the caveat should have been allowed to stand so as to maintain the *status quo* between the parties pending the determination of the civil suit.

For the reasons stated above we allowed the appeal.

Appeal allowed.

Solicitors: *Triptipal Singh & Co.; Mayandi & Panjaram.*